

REMARKS

Claims 1-10 are at issue in this application, with each of these claims standing rejected under 35 U.S.C. § 103(a) as unpatentable over Hovestad (USPN 3,671,990). In view of the following arguments, the applicants respectfully request reconsideration and allowance of claims 1-10.

Claim Rejections Under 35 U.S.C. § 103(a)

Independent claim 1 recites, *inter alia*, a dock leveler comprising a movable deck with a right and a left upper plate and a joint between the right upper plate and the left upper plate that extends longitudinally from a front edge to a rear edge of the deck, wherein the right and left upper plates are substantially stationary relative to each other.

In contrast to the leveler recited in claim 1, Hovestad generally discloses a dock leveler with a single deck plate similar to those described in the "Description of Related Art" section of the current application. However, because there is nothing in Hovestad that hints at the desirability of multiple deck plates (nothing that would lead one of ordinary skill in the art to the invention claimed here), one must look elsewhere for such a motivation. The official action suggests that one of ordinary skill in the art would be motivated to modify the leveler taught by Hovestad to include multiple smaller deck plates because it is well known in the industry to use multiple plates to form a deck/ramp and because smaller plates are inexpensive and easily transported.

In this case, the official action fails to provide evidence that it is well known or that it would be desirable to use multiple plates, which are substantially stationary relative to each other, to form a leveler deck, much less evidence that such relatively stationary plates should be used and configured so that a joint between upper left and right deck plates extends longitudinally from a front edge to a rear edge of the deck as recited in claim 1. Thus, if the examiner elects to maintain the contention that it is well known in the industry to form a leveler deck using multiple plates in the configuration recited in claim 1, the applicants respectfully request evidence supporting this contention in the next official action.

The official action also fails to provide evidence supporting the assertion that a greater number of smaller plates is desirable because smaller plates are inexpensive and easily transported. On the contrary, using a greater number of plates to form a leveler deck results in a

higher part count for a finished leveler deck and would likely result in a greater amount of assembly labor (and costs) as well as greater material costs due to the additional fabrication or processing (e.g., machining) that may be required to render each plate suitable for use in the final assembly.

Further, positioning the deck plates so that the joint(s) run transversely across the deck instead of longitudinally as recited in claim 1 may be structurally advantageous because joint(s) between the plates would extend transversely across the support beams. In contrast to the art of record, the applicants of this application recognized that a longitudinal joint extending between multiple deck plates may provide other significant advantages such as, for example, increased productivity and increased safety because such a longitudinal deck plate joint provides a permanently visible guideline (unlike a painted or taped line) on the deck surface that does not interfere with deck traffic. Thus, even assuming *arguendo* that the motivations asserted in the official action are true, one of ordinary skill in the art still would not arrive at the invention claimed here without the impermissible hindsight afforded by the current application.

Further scrutiny of the motivation to modify Hovestad asserted in the official action reveals additional flaws. When making an obviousness determination, one must evaluate whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 218 USPQ 871 (Fed. Cir. 1983); MPEP § 2141.02. The “whole” invention claimed in independent claim 1 is a dock leveler. The official action focuses only on a portion of the claimed invention – the deck/ramp portion. If one reconsiders the motivation asserted by the official action against the claimed invention as a whole, the asserted motivation is clearly counterintuitive. Specifically, while each small plate may be less expensive and easier to handle than a larger, unitary plate, a dock leveler (the “whole” claimed invention) with a deck (a portion of the claimed invention) that has a plurality of plates may actually be more expensive. The part count of the dock leveler would be increased (multiple plates), requiring a larger inventory of parts, and assembly of the leveler may take longer (assembling more parts and requiring additional joining processes). Thus, the use of multiple plates has inherent disadvantages, as well as the benefits first recognized in the current application.

Another part of the “as a whole” inquiry is the recognition of a problem or a cause of a problem and taking inventive steps to address that problem. MPEP § 2141.02. As trucking firms, manufacturing plants, and warehouse facilities strive to become more productive and

efficient at transporting and loading/unloading product, trucks and dock levelers have become larger and more product is being "stuffed" into the trucks. As a result, two forklifts may be used to service a single truck, a practice that has inherent dangers (*e.g.*, an increased risk of collision damage to equipment or injury to operators). The current application is the first to recognize these dangers, the shortcomings of other solutions (paint that can wear off, etc.), and it is the first to provide a solution in the form of a permanent, clearly visible guideline on the surface of a dock leveler. It is only the impermissible hindsight afforded by the current application that would lead one of ordinary skill in the art to modify the Hovestad dock leveler to include a deck with a joint that extends the length of the deck, between two upper plates.

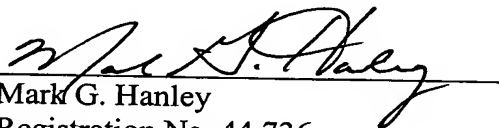
CONCLUSIONS

In view of the foregoing arguments, independent claim 1 and claims 1-10 dependent directly or indirectly thereon are in a condition for allowance. Accordingly, the applicants respectfully request that this application be passed to issue.

Respectfully submitted,

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